

# FREEDOM OF INFORMATION CENTER OF ARMENIA

## YOU HAVE A RIGHT TO KNOW

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## **C O N T E N T**

White and Black Lists 2011.....	<b>3</b>
The Judge is Unaware of the Public Importance Organizations .....	<b>6</b>
A 3 Year Long Court Case Came to an End With FOICA's Victory.....	<b>7</b>
Hamalsaranakanner Condominium Goes Underground? .....	<b>8</b>
FOICA vs. "SME Investments" UCO CJSC.....	<b>9</b>
The FOICA Publishes Controversial Documents on Mashtots Park.....	<b>10</b>
Information Billboards as an Accessible Means to Ensure Publicity.....	<b>10</b>
New Requirements will be Prescribed to Official Websites.....	<b>11</b>
The Expert Conclusion of the Information Disputes Council.....	<b>13</b>
Political Parties as Information Holders .....	<b>14</b>

## White and Black Lists 2011

For the first time the Freedom of Information Center published a White List of those officials and institutions that reviewed their activities after being included in the quarterly Black Lists, and carried on reforms that improve transparency.

### WHITE LIST - 2011

Starting from 2011 the Freedom of Information Center publishes the annual White List. All those information holders, which after being included in the FOICA's quarterly Black list reviewed their activities in the FOI field and carried out reforms in order to ensure access to information, have not been included in the annual Black list of the officials who have violated the people's access to information right. These information holders and their heads are now involved in the FOICA's annual White list.

- **Mr. Harutyun Kushkyan - RA Ministry of Healthcare**

Harutyun Kushkyan didn't answer to the 07.02.2011 request of the FOICA. By this request the FOICA has requested the following information:

1. Does the Ministry have any documents that were declassified in 2010?
2. If yes, please, provide copies of those documents.

After being included in the FOICA's Black list the Ministry of Healthcare provided a full answer to the FOICA's information request. Besides, the employee of the Ministry, because of whom the Ministry was included in the Black list, got a reprimand. In addition, Mr. Harutyun Kushkyan publicly announced that they would be consistent, so that the information would always be provided within the defined time frames. FOICA's further monitoring showed that in the FOI field the situation in this Ministry was reformed.

- **Mr. Sargis Kharaqeshishyan - Mayor of Stepanavan**

Sargis Kharaqeshishyan didn't answer to the FOICA's 18.04.2011 request. He didn't provide the copy of a decision of the Stepanavan Council of Elders, by which was defining a payment for information provided by the Stepanavan municipality: 500 AMD for 1 page.

After being included in the FOICA's quarterly Black list Stepanavan Council of Elders made void its decision by which a payment for information provided by the Stepanavan municipality was defined 500 AMD for 1 page. The Stepanavan municipality also provided a full answer to the FOICA's request.

## **BLACK LIST - 2011**

These officials have violated the people's access to information right in 2011

- **Mr. Armen Yeritsyan - RA Minister of Emergency Situations**

On October 19, 2011, the Freedom of Information Center sent an information request to the RA Ministry of Emergency Situation asking to provide the following information: 1. Does the Ministry have any documents that were declassified in 2010? 2. If yes, please, provide copies of those documents. This was the second request with the same content, as the Ministry didn't answer the FOICA's request of March 29, 2011. The second request also remained unanswered. As an answer to the FOICA's 07.02.2011 information request about the declassified documents the RA Ministry of Emergency Situations made a reference to the RA Special Investigatory Service, noting that the asked documents were confiscated by the SIS. But The Special investigatory Service informed the Freedom of Information Center that the copies of the confiscated documents were left in the Ministry of Emergency Situation. In other words, the Ministry of Emergency Situation is considered to be the information holder in this case. Thus, on March 29, 2011, the Freedom of Information Center once again sent an information request to the Ministry asking to provide the abovementioned information, but the FOICA's request was left unanswered.

The RA Minister of Emergency Situations also left the FOICA's 25.05.2011 request unanswered, where the Freedom of Information Center of Armenia was requesting information whether there were documents under the Ministry's possession, which were made declassified in 2010, and if there were any then the Ministry was asked to provide their copies.

- **Mr. Seyran Ohanyan - RA Minister of Defense**

On 20 May, 2011 student Lilit Sedrakyan had sent a written inquiry to the Minister, asking for information about the number of soldiers that for different reasons died in ARM detachments in 2010-2011, and what steps are taken to avoid such incidents. The student's request was left unanswered. On 22 June, 2011 the FOICA sent the same request to the Minister Seyran Ohanyan, which was also left unanswered.

- **Mr. Arthur Gevorgyan - Head of the Information and Public Relations Department of Yerevan Municipality**

Arthur Gevorgyan did not answer to journalist Arman Gharibyan's 23.06.2011 information request that was sent to the official e-mail address of Yerevan municipality. With this request the journalist was asked how many kindergartens were currently operating in Yerevan and how many had been closed since 2000. The journalist had called and checked that the request had been received.

- **Mr. Sasun Safaryan - Head of village Aygedzor**

On May 10, 2011, the Freedom of Information Center sent an information request to the Aygedzor rural community asking to provide the copies of the protocols of the Aygedzor Council. The rural community left FOICA's request unanswered. Thus, on September 14, 2011, the FOICA sent the second request with the same content. The FOICA's second request also remained unanswered.

- **Mr. Stepan Aslanyan - Director of "Ashtarak Kat" CJSC**

On November 7, 2011, the FOICA sent written information requests to the "Ashtarak Kat" CJSC asking to provide information on the production of the "Ashtarak Kat" CJSC. The FOICA's request remained unanswered.

- **Mr. Tigran Vardanyan - Director of "Daughter Marianna" Co. Ltd**

On November 7, 2011, the FOICA sent written information requests to the "Daughter Marianna" Co. Ltd asking to provide information on the production of the "Daughter Marianna" Co. Ltd. The organization left FOICA's

request unanswered. Thus, the FOICA sent the second request with the same content. The "Daughter Marianna" Co. Ltd provided an incomplete and unjustified late response to FOICA's second request.

- **Mr. Boris Makichyan - Rector of the Northern University**

The Northern University left unanswered student Hripsime Hovhannisyan's 17.03.2011 information request. By this request the student asked if there were made any repair works in the Northern University in 2010, and if so, how much money was spent. On March 29, 2011, the FOICA sent an information request for Hripsime Hovhannisyan with the same content, but the Northern University left also the FOICA's request unanswered.

- **Mr. Arman Khachaturyan - Chief Executive Director of HayPost CJSC (ex-director)**

On 12 October, 2010 president of "Marshal Baghramyan County" Robert Mkrtchyan turned to Arman Khachaturyan, but has not yet received an answer from him. On 26 May, 2011 the Freedom of Information Center of Armenia sent an information request asking in what stage was president of "Marshal Baghramyan County" Robert Mkrtchyan's request and when it will be answered. This request was also left unanswered.

- **Mr. Armen Tadevosyan - President of "Hamalsaranakanner" condominium**

Armen Tadevosyan did not answer to the FOICA's 13.06.2011 request about the activities of the county. The FOICA's 30.06.2011 double request was also left unanswered. On June 13, 2011, the FOICA sent a written information request. On August 6, 2011, the FOICA sent a written information requests to "Hamalsaranakanner" condominium asking to provide information on maintenance of the Tsarav Aghpyur 55/5 building, as well as asking for a copy of the "Hamalsaranakanner" condominium statue. The FOICA's request remained unanswered.

- **Mr. Armen Mesropyan - President of "Eryak" condominium**

On August 6, 2011, the FOICA sent a written information requests to "Eryak" condominium asking to provide information on the activities of the condominium. The condominium left FOICA's request unanswered.

- **Mrs. Vardush Kinkladze - President of "H & H" condominium**

On August 6, 2011, the FOICA sent a written information requests to "H & H" condominium asking to provide information on the activities of the condominium. The FOICA's request remained unanswered.

- **Mrs. Karine Khachatryan - President of "Avan" condominium**

On August 6, 2011, the FOICA sent a written information requests to "Avan" condominium asking to provide information on the activities of the condominium. The condominium left FOICA's request unanswered.

*By the way, The FOICA has filed lawsuits against four officials out of the Freedom of Information Center's annual Black list to receive the requested information. These court cases are: FOICA vs. the RA Ministry of Emergency Situations, FOICA vs. "Hamalsaranakanner" ("Universitiers") Condominium, FOICA vs. "Ashtarak kat" CJSC and FOICA vs. "Daughter Marianna" Co. Ltd.*

## FOI COURT CASES

# The Judge is Unaware of the Public Importance Organizations

In December 2011, the Freedom of Information Center (FOI Center) filed a suit in the Administrative Court of the Republic of Armenia against "Ashtarak Kat" and "Doostr Marianna" LTD as they have violated the FOI center's right to receive information. However, on the 23rd and 26th of January, the court rejected the complaint against "Ashtarak Kat" and "Doostr Marianna" LTD, claiming that the listed companies are not public organizations and do not hold information of public importance.

In November 2011, the FOI Center sent an inquiry letter to the director of the "Ashtarak Kat" CJSC, Stepan Aslanyan, and the director of the "Doostr Marianna" LTD, Tigran Vardanyan, asking them to provide information whether the dairy products that the companies produce are made from natural milk or not, and also asking them to provide the list of products which contain natural milk and the list of products which contain milk powder and/or the proportion of the natural milk in their products. When there was no answer received, FOI center sent letter requesting the information to the "Ashtarak Kat" CJSC and "Doostr Marianna" LTD again. As a response to the double request of information, an electronic answer was received from «Doostr Marianna» LTD, according to which the information requested by the FOI center can be found on each product of the company, also, reference was made to the web page of the company. However, the information requested by the FOI center was not found to be listed on the products nor on the webpage. Thus, the response was considered to be groundless. "Ashtarak Kat" CJSC left unanswered the double information requested letters sent by the FOI center.

The Administrative Court of the Republic of Armenia (Judges Artsrun Mirzoyan and Aghasi Darbinyan), by rejecting to accept the claims of the FOI Center, claimed that these companies are profit-seeking (commercial) enterprises and, thus, "the claims do not correspond to public legal relations..." In another words, the court considered that "Ashtarak-Kat" CJSC and "Doostr Marianna" LTD hold no public significance.

The judges that refused to accept the claims that the webpage of the State Commission for Protection of Economic Competition<sup>1</sup> contains the list of the business entities in Armenia that have a dominant position in the trade markets. "Ashtarak Kat" CJSC and "Doostr Marianna" LTD are also included in that list and, according to the article 3 of the Republic of Armenia's law on Freedom of Information, organizations that have a dominant or monopoly position in the trade market are considered to be companies of public importance and are information holders.

On January 23, 2012, the RA Administrative Court made a decision to reject the FOICA's lawsuit finding that the claim is not a subject to the Administrative Court.

On February 6, 2012, the FOICA appealed the Administrative Court's decision. On March 5, 2012, the RA Administrative Court of Appeal satisfied the FOICA's claim partially. The Court satisfied the FOICA's demand to imposing an administrative penalty on the director of the company Stepan Aslanyan and rejected the demand to obligate the "Ashtarak kat" CJSC providing the requested information.

On February 13, 2012, FOICA appealed the decision of the Administrative Court. On March 5, 2012, the RA Administrative Court of Appeal satisfied the FOICA's claim partially. The Court rejected the FOICA's demand to obligate the "Daughter Marianna" Co. Ltd providing the requested information and satisfied the demand to imposing an administrative penalty on the director of the company.

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1. [http://competition.am/uploads/resources/Cucak\\_dominant\\_for\\_site\\_24\\_11\\_2011.pdf](http://competition.am/uploads/resources/Cucak_dominant_for_site_24_11_2011.pdf)

## A 3 Year Long Court Case Came to an End With FOICA's Victory

Because of concealing information, the "Yerevan Construction and Investment Projects Implementation Agency" State Non-Commercial Organization (SNCO) had a three years' persistent legal fight, wasting state resources on court appeals. On 18 January 2012 the RA Court of Cassation ended Freedom of Information Centre's three year struggle for receiving information, by finally denying acceptance of the cassation appeal by "Yerevan Construction and Investment Projects Implementation Agency" SNCO.

On 27 February 2009, the Freedom of Information Center of Armenia /FOICA/ had sent an information request to the SNCO, requesting to provide information about the SNCO activities, including the list of organizations having concluded Assignment and Description Contracts with the SNCO in 2006, 2007, 2008 and the amount of income received by the SNCO from these Contracts. In response to this, "Yerevan Construction and Investment Projects Implementation Agency" (SNCO) responded that the information requested by the FOICA is a commercial secret. This was a preposterous response since the SNCO is a non-commercial organization, does not pursue a commercial interest and thus can not have a commercial secret. It's worth mentioning that the requested information can not be deemed as a commercial secret of the organizations which concluded a Contract with the SNCO either, since

the FOICA had requested information about the general income and not the amount of income received from each organization.

The Freedom of Information Centre went to the court to appeal this illegal denial of information. In its decision of 18 January 2012, the RA Cassation Court upheld the decision of the Administrative Court dated 20 January 2011, according to which the activities of the "Yerevan Construction and Investment Projects Implementation Agency" SNCO were recognized as illegal, obliging the SNCO to provide the information requested by FOICA within a 5 days time and to pay 24 000 as a compensation of court expenses incurred by the FOICA.

The SNCO finally provided the complete information, as well as compensated 24000 AMD to FOICA.

## Hamalsaranakanner Condominium Goes Underground?

The Freedom of Information Center of Armenia filed a lawsuit against the chairman of the "Hamalsarakanner" condominium Armen Tadevosyan on November 11, 2011 for failure to provide information and for working in secret.

It has been 3 months now that the RA Administrative Court is looking for the chairman of the "Hamalsaranakanner" Condominium Armen Tadevosyan to hand over a notice of a court session. However, as it turns out, "Hamalsaranakanner" Condominium and its chairman are operating underground. Their activity address is not registered by any of the Armenian information directories. The notices sent by the court to all possible addresses were returned due to failure to find the addressee.

The Freedom of Information Center of Armenia filed a lawsuit against the chairman of the "Hamalsarakanner" condominium Armen Tadevosyan on November 11, 2011 for failure to provide information and for working in secret. In particular, the FOICA had requested information on grounds for the pricing of the fees for the apartment house at 55/5 Tsarav Aghpyuri, Yerevan the amount of the money for services, grounds for pricing of the amount of money for services, a copy of the 2011 budget of Hamalsaranakanner condominium, and other information about the activities of the condominium. By this lawsuit FOICA demands to oblige the "Hamalsaranakanner" condominium to provide the requested information within a five-day period as well as to make the requested information available in a public place.

Note that this particular condominium is meant to serve the building at 55/5 Tsarav Aghbyuri envisaged for Yerevan State University built under the auspices of the RA President.

On June 13, 2011 the FOICA sent written information requests to the head of "Hamalsaranakanner" condominium Armen Tadevosyan, requesting the following information:

1. When and where was a publication made on the

meeting of Condominium, during which the amounts of service fees were approved for Tsarav Aghbyur street 55/5 building?

2. When and where did the abovementioned meeting of the Condominium take place and how many members of the Condominium did participate in that meeting?
3. Please, provide a copy of the report of the Condominium session, during which the volume of service fees were defined for Tsarav Aghbyur 55/5 building.
4. Please, also provide a copy of the Condominium decision, which defines the amounts of service fees for Tsarav Aghbyur 55/5 building.
5. What are the bases for service costs, according to which the amounts of the abovementioned fees were defined? Please, provide the calculated monetary amounts for each service separately, together with their appropriate bases.
6. Please, provide copies of the contracts signed between the Condominium and private companies or individuals for the Tsarav Aghbyur 55/5 building's garbage cleaning, cleaning of the building's entrance and adjunct areas, external illumination, illumination of staircases and corridors, elevator maintenance and other services.
7. Please, provide the 2011 budget of "Hamalsaranakanner" condominium.

However, the FOICA's information requests were left unanswered.

On December 8, 2011 in the First Instance Courts of General Jurisdiction of the Center and Nork-Marash administrative districts of Yerevan a court hearing on the FOICA's claim against "Hamalsaranakanner" condominium was held. The representative of the



condominium was absent. Therefore, the court hearing was postponed.

The second court hearing, which took place on 23 January, 2012, was also postponed.

The third court hearing took place on February 28, 2012. The representative of the condominium was

absent. again. Thus, the court hearing was postponed and will take place on April 22, 2012. If the respondent does not come to the court again, the court hearing will take place without the representative of the condominium.

## FOICA vs. "SME Investments" UCO CJSC

On November 11, 2011, the "Ankakh" weekly sent an information request to the "SME Investments" UCO CJSC asking to provide information on individuals and organisations funded by the UCO and information on funding amount. The "SME Investments" UCO CJSC denied to provide the requested information, mentioning, that it is subject to banking secrecy. It should be noted that the requested information refer to financing provided from the state funds. Thus, the "Ankakh" weekly turned to The Freedom of Information Center.

To help the "Ankakh" weekly to receive the needed information, on November 22, 2011, the FOICA sent an information request to the "SME Investments" UCO CJSC mentioning that the requested information refer to the state funds and asking to provide the following information:

1. How many individuals and organisations were funded by the "SME Investments" UCO CJSC from the state funds?
2. Which are that individuals and organisations (please, enter the full names)?
3. What funding was provided to each individual and organization?

The UCO answered to the FOICA's request partially. In addition, the UCO made reference to trade secret (banking secrecy), without mentioning the specific provision of law, according to which the requested information is considered confidential.

Thus, on December 23, 2011, the Freedom of Information Center of Armenia applied to the Court of the General Competence of Center and Nork-Marash administrative districts asking to oblige the "SME Investments" UCO CJSC to provide the requested information and to impose an administrative fine of 50,000 AMD on the director of the credit organisation.

The first court hearing took place on February 27, 2012, at 15:00, in the Court of the General Competence of Center and Nork-Marash administrative districts. During the preliminary court hearing the representative of the Freedom of Information Center insisted the claim, and the case went to trial phase.

The next court hearing took place on March 2, 2012, when the trial phase ended. The decision of the Court was announced on March 15, 2012, by which the Court rejected the FOICA's claim.

## **The FOICA Publishes Controversial Documents on Mashtots Park**

**Y**erevan municipality timely provided full answers to the Freedom of Information Center's information request dated 20.02.2012 about construction works in Mashtots Park. The complete response contain 3-page letter together with 28 pages attachments.

Analysing the provided documents, it becomes clear that Mashtots Park land allocations were made in 2001-2006 with 5-25 year duration by the former mayors Mr. Robert Nazarian and Mr. Yervand Zakharyan. Only one land allocation was fulfilled in 2011 – a 12.56 square meters land was provided to "Artak Harutyunyan" IE with 5-year duration.

So why the land allocations have been made 10 years ago, but the construction works are taking place now? And why the problem is connected with the pavilions removed from the Abovyan Street? We are waiting for the Municipality's comment.

The answer of Yerevan Municipality and the attached documents /in Armenian/ are available at <http://www.givemeinfo.am/en/case/692/>.

## **Information Boards as an Accessible Means to Ensure Publicity**

The Freedom of Information Center has placed 246 information billboards in 53 Armenian urban and rural communities during 2007-2012.

**O**ne of the most important things in the freedom of information field is that publicly important information be published by the state bodies on their own initiative. For this purpose, FOICA, supported by the USAID, provides information billboards to rural and urban communities for placing community-related information subject to publication.

These billboards are a flexible, uncostly and efficient means to make the information subject to obligatory publication by the local self government bodies accessible.

The information placed on the bulletin boards consists of two parts: changeable and unchangeable. The unchangeable part provides the main provisions of the RA law "On Freedom of Information", information on how a citizen can exercise his/her right to receiving information, and a sample form of request for information. In the unchangeable part of

the board, necessary information is provided on the community's budget, report on budget fulfillment, copies of the decisions by community leaders or councils of elders, sessions of community elders, etc. This section of the board is to be updated on a permanent basis.

Within the scope of this process, a memorandum has been signed between the FOICA President and community heads, under which the community heads undertake to periodically (at least once a month) update the information published on the boards as well as ensure the awareness of the community's population about the boards. Community heads have undertaken to ensure that the boards will be used exclusively for public purposes, meaning that placement of advertisements is to be strictly prohibited.

Another 24 bulletin boards will be placed in 4 communities by 2013.

## New Requirements will be Prescribed to Official Websites

The website of the RoA Ministry of Transport and Communication includes the draft Decree of the Government “On the requirements prescribed to official websites of state agencies”, which envisages streamlining and unifying the requirements that apply to official websites.

**A**s the draft implies, the main purpose of the Decree is to define clear-cut requirements for official websites. Upon the Decree’s adoption all official websites in Armenia will need to comply with the set requirements, which, as referred in the text below, “are of technical and organizational nature and are aimed at ensuring security, maintaining and ensuring information and technological constituents”. In a conversation with us, the Head of Informatization Department of the Ministry of Transport and Communication Norayr Stepanyan noted that the Decree is mainly targeted at systematizing and integrating official websites in terms of both external design and from a technical point of view, which will facilitate the solution of security related issues. N. Stepanyan noted that while developing the draft, the authors have mainly taken into account the experience of Moldova and Kirgizstan.

The specialists however have a dubious approach towards the draft’s requirements. This mainly concerns the unified design and issues related with the websites’ security. The Head of “Helix Consulting” company, Aram Mkhitarian, believes that this document should have a consultative nature instead of regulative. “It is very positive that the document mentions the standards that the official websites need to comply with – W3C (World Wide Web Consortium), WAI (Web Accessibility Initiative), the latter being intended for ensuring the websites’ availability for people with limited abilities and at present only few websites in Armenia follow this standard. This is a good initiative but once adopted it will lead to a situation when all official websites will have to be upgraded in order to ensure these standards. In some websites this may take days, in others – months, since all websites that have been constructed as per old technologies, do not correspondent to these standards. I think it is negative that the

document targets streamlining the websites’ appearance, their structure, sections, since whilst this can be done for the Ministries, for instance, which have more or less similar structure, there are certain agencies, that have a different structure and can not follow the same standard. For example the egov.am is an electronic services portal having a completely different set up, solves completely different issues and can never comply with this standards”.

The Executive Director of PanARMENIAN Media, IP Specialist Armen Azaryan says that there is no country in the world having adopted a similar legal act with a successful implementation practice. “Therefore we should not borrow these practices, implement them trying to adapt to our needs, since everything is evolving very fast in this field and both the demands and environments are very different”. According to Armen Azaryan a legal act regulating the field is undoubtedly needed but this should concern, for example, the requirement that the website (server) be located in Armenia, that there should be antivirus programmes, etc. In order to regulate other issues it would be more appropriate to set up a private company with security and other specialists to work on the websites by creating work plans separately for each website and to follow their implementation since each of the websites has its own peculiarities. As to why such company should be a private one, Armen Azaryan explains that for now the state does not have enough funds for hiring such specialists. “The function of the relevant state structure should be then to ensure communication between relevant specialists and the state”, Azaryan notes.

Experts from “Internet Society” NGO have been involved in the process of the draft’s elaboration but the Vice-President of this NGO, Grigor Saghyan,

www.foi.am

presents his main objections about the draft now: “Security related issues should be separated, provisions concerning design should be made more moderate and importantly, the impact that this initiative will have on the budget should be mentioned by indicating the funding sources”. The draft includes net and security related issues that require the involvement of relevant experts, however the document says nothing about financial sources to engage with such personnel. The document excludes as well the expense that will be necessary to re-design the websites, since most of these websites do not meet the defined standards”, the NGO Vice-President says.

Draft Decree requirements addressing the content of official websites are almost completely welcomed by the non-government NGOs in the media sector. Liana Doydoyan, a Freedom of Information Centre (FOIC) expert finds it very positive that as per this Decree the information which is subject to compulsory publication as per the Law on Freedom of Information (FOI) should be published on the relevant agencies’ websites. “Currently the websites of state structures are globally used as one of the most effective tools to pro-actively provide information. While the Law clearly stipulates the requirements and procedure for the compulsory publication of official information, it still does not regulate mechanisms for providing official information electronically. This Decree would solve the issue since most of the official websites currently do not correspond to the FOI Law’s requirements”, the FOIC expert mentions.

The Head of “Helix Consulting” Aram Mkhitarian mentions another significant aspect that concerns the content of official websites: “The most important thing that I highly appreciate is that the Decree explicitly mentions the content that the official websites should have. The following point, for instance, considerably facilitates the work with state agencies and clearly demands that there should be a responsible person or unit for the website’s content: “In order to organize the process of ensuring information availability, its updating and uploading, as per the Decree of the relevant state institution, an officially designated person or a structural unit shall be appointed”. In the opinion of Olga Safaryan, lawyer

for the Committee to Protect Freedom of Expression NGO, if adopted and truly functional, the Draft will significantly promote the state agencies’ efforts to be more consistent in improving their websites. The results of the monitoring conducted by the Committee show that there are already some positive developments in this field. “These results however are not fully satisfying. Pieces of information are either missing in the websites or presented in such way as they are not user-friendly”, says Olga Safaryan.

The President of the “Journalists for the Future” NGO Suren Deheryan considers that it is important to have “one handwriting” in the official websites. “A citizen should be able to easily find answers to his/her questions, i.e. interactions with state bodies should be simplified to the maximum and made easy for citizens”. He believes that currently the key problem in terms of official websites is the absence of information sections telling who information providers are. Not all websites include this information in a complete manner. According to him, the document contains good provisions and if properly enforced, it can bring positive change.

As FOI expert Liana Doydoyan added, the Centre has prepared recommendations on introducing supplements to the draft Decree and has sent these recommendations to the Ministry of Transport and Communication. These recommendations include, for instance, inclusion of freedom of information sections in the websites to present FOI legislation, samples for submitting information requests and to provide guidance on the timeframes and procedures for receiving information. “Following our recommendation such section is already functional on the website of the Ministry of Territorial Administration, which, I believe, facilitates the process of receiving information”.

The draft Decree however is in a discussion stage and we would suggest that all interested organizations and companies familiarize with the draft and provide their professional opinion and recommendations, in order not to face problems following its adoption, as is the case with many bills.

***by Parandzem Vardanyan***

# The Expert Conclusion of the Information Disputes Council

## About the Court Case of Citizen Gurchen Aghajanyan vs. "Zhoghovurd" ("People") Daily

The "Zhoghovurd" daily turned to the Information Disputes Council, requesting an opinion about Citizen Gurchen Aghajanyan's claim against the newspaper. Examining this case, Information Disputes Council publishes its professional conclusion.

On 06 August, 2011 the editorial department of "Zhoghovurd" daily received an unsigned letter via post, which contained information about the unlawful acts of the former head of the State Property Management Department under the Government of the Republic of Armenia Karine Kirakosyan and former deputy head Ashot Markosyan. The envelope contained the following information about the sender: sender – Gurchen Aghajanyan, address – Tigran Metsi 4, Yerevan. The letter was sent as a receipt notification, where the return address was that of the State Property Management Department. For the sake of clarifications, the newspaper talked to Karine Kirakosyan and on 09 August, 2011 published an article titled "Galust's Son is Required to". The article included the facts listed in the letter and Karine Kirakosyan's response.

The next day Gurchen Aghajanyan arrived at the editorial department and insisted that he is not the author of the letter, that he had not written any letters about the listed facts and had not sent it to anyone. Then he presented a written response and demanded that it be published in the newspaper as a refutation. The newspaper denied publishing the refutation text, reasoning that the contextual requirements for refutations were not maintained in the text.

Gurchen Aghajanyan took it to court, demanding that a refutation be published and that AMD804,000 be compensated (AMD500,000 for slander, AMD300,000 for lawyer's fees, and AMD4,000 for the stated fee).

**The Information Disputes Council finds** that although from a legal perspective the media outlet had the right to publish the content of the controversial letter, from a professional good-faith perspective it would have been preferable to publish the letter, without mentioning the name of the author (as information from an anonymous source), or, parallel to mentioning the name of the author, they could have also mentioned that the media outlet was not sure who the real author of the letter was, because it was not possible to verify the sender's identity. Because this was not done, in the situation created after publishing the article it was necessary to grant the citizen with a chance for refutation or response, as much as would be necessary to state that Gurchen Aghajanyan was not the author of the controversial letter.

**The Council also finds** that the plaintiff's material compensation demands are not proportional and justified, because they do not serve their main purpose and are not necessary in a democratic society.

***Information Disputes Council***

***February 8, 2012***

## Political Parties as Information Holders

Do the political parties have to work publicly? Do they have to, on their own initiative or in case of demand thereof, provide information about themselves and their activities? To answer these questions, we should address the Armenian legislation on freedom of information; however let's first speak about the related international documents.

### European Union

There is not any regulation whatsoever that would, on a national level, oblige political parties to respond to information requests or to publish on their own initiative certain information. However the EU defines certain conditions for those political parties operating in Europe which apply to the EU to get funding. For instance, in 2003/2004, according to Article 6 of the EU Regulation, the applying party, among other conditions, must annually publicize its incomes and expenses as well as its asset and liability statements, and funding sources, mentioning the donor list and the amount of donation per donor, except for those exceeding 500 Euros.

### The United Nations Convention against Corruption

The UN Convention against Corruption addresses the financial transparency of the political parties, defining in Paragraph 3 of Article 7 that: "Each State Party shall also consider taking appropriate legislative and administrative measures, consistent with the objectives of this Convention and in accordance with the fundamental principles of its domestic law, to enhance transparency in the funding of candidatures for elected public office and, where applicable, the funding of political parties."

### The Council of Europe's Recommendation on common rules of fighting corruption during funding of political parties and election campaigns

The Council of Europe's Recommendation Rec (2003)4 is the most comprehensive international document defining guidelines for good and transparent practices of political parties on common rules against corruption during financing of political parties and election campaigns. This document

includes elements of respective previous recommendations and recommends the nations fighting corruption to analyze how these recommendations are applied. Although this recommendation does not address the citizens' right for freedom of information and the passive means of transparency provided by information holders, such as information requests; however a number of common rules in the Recommendation refer to provision of transparency on the initiative of information holders themselves.

The common rules of the recommendation on ensuring transparency on the own initiative of an information holder state that:

- Each type of donation should be made public and not secret (Article 3.a);
- The donations received by political parties should be made public especially in the cases when they exceed the fixed ceiling (Article 3.b.i.);
- States should require political parties, at least annually, to publicize their financial statements or at least a summary of those statements and should include information on donations and expenditures (Article 13);
- An independent monitoring should be conducted that would include data on the publication of accounts (Article 14).

The rules of the Recommendation defines that the respected accounts should be published (Article 11), including information on all donations provided by legal entities (Article 5.i) and all expenditures on election campaigns (Article 9).

### RA legislation

Article 7 of the RA Constitution stipulates the obligation of political parties to work publicly; it reads: "Political parties shall ensure the openness of their

financial activities". This means that the financial activities of political parties should be open and transparent, and information about the financial activities of the political parties should be publicly available.

Section 2 of Article 8 of the main legal act regulating activities of political parties, the RA law "On Political Parties" prescribes that, among other principles, activity of political parties is based also on the principle of publicity. Pursuant to Section 4 of the same law, "Political parties function publicly; their founding and program documents are published for general awareness". Section 2 of Article 3 of the RA "Law on Political Parties" defines that the main documents representing the activity of any political party – the Bylaws and the Program of the party reflecting the goals and objectives of the party – should be published through mass media.

The main legal act regulating the right for freedom of information is the RA law "On Freedom of Information". Therefore, let's address this law to determine whether or not the political parties are considered as information holders, based on the provisions of the RA law "On Freedom of Information".

The RA law "On Freedom of Information" defines that state and local self-government bodies, state institutions, organizations sponsored by the state budget as well as organizations of public importance and officials thereof are considered to be information holders. The law does not address political parties specifically, therefore it should be made clear to what extent the political parties are embraced in any of the groups of information holders defined by the RA law "On Freedom of Information".

Thus, from the definition of political parties it is clear that political parties are not state governance bodies, local self-governance bodies or state institutions.

Political parties as organizations of public importance. According to Section 4 of Article 3 of the RA law "On Freedom of Information", organizations of public importance are: private organizations having monopoly or a dominant role in the goods market, as well as private organizations delivering services

to the public in the healthcare, sport, education, culture, social security, transport and communications, and utilities.

From the concept of political parties it proceeds that political parties cannot be organizations having monopoly or dominant position in the goods market since the political parties as such are not involved in entrepreneurship. In addition, Section 3 of the RA law "On Political Parties" defines that the purpose of the activity of political parties is to participate in the political life of the society and the state; while Section 4 of Article 3 of the RA law "On Freedom of Information" does not say anything about the political sphere. In addition, even if the goals of the political parties reflected in their bylaws and programs, whether they are of healthcare, culture or social character or refer only to education or sport, political parties will not be considered as organizations of public importance anyway, since they do not render any services to the public in the above spheres. Therefore, based on the above statements, political parties are not considered to be organizations of public importance and are not covered by the law of the RA "On Freedom of Information" as organizations of public importance.

Political parties as organizations funded by budgets: According to Article 24 of the law of the RA "On Political Parties", the monetary means of a political party are formed also from budget funding. Article 27 of the same law sets out the procedure of state funding of the activities of political parties. According Paragraph 1 of Article 27. "State funding of political parties is performed from the means of the state budget of the Republic of Armenia". However, not all political parties receive allocations from the budget: according to Article 27, "State budget means are allocated to those political parties (party alliances) whose electoral list during the last elections to the National Assembly has received at least 3 percent of the sum of the total number of votes cast in favor of electoral lists of all parties that have participated in the elections and the amount of inaccuracies".

Thus, political parties receiving funding from the state budget are considered to be information holders based on the logic of the RA law "On Freedom of Information"; and all those rights and liabilities set out by the RA law on FI for information holders apply

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also to these political parties. And those political parties, who do not receive funding from the state budget, are beyond the coverage of this law.

Although political parties as such are not included in the RA law “On Freedom of Information”, however a number of other legal acts define the obligation of political parties to work publicly and to publish information. For instance, as mentioned before, the Armenian Constitution stipulates that “Political parties ensure the publicity of their financial activity”.

According to the RA law “On Political Parties”, any political party should publish information about its founding congress. According to Paragraph 1 of Article 12, “Organizers of the Founding Congress, at least one month prior to the Founding Congress, publish through mass media the venue and the time of holding the Founding Congress, as well as the main provisions of the draft Bylaws and the draft Program of the political party”.

The RA law “On Political Parties” regulates also the issue of publicity of the financial activity of political parties. In particular, Article 22 of the law defines that a political party shall publish through printed media a report on the use of its property specifying the source of its formation. Another article of the law, Article 28, defines the obligation of a political party to publish its financial reports. According to Paragraph 2 of this article, “A political party, no later than 25th of March of the year following the reporting year, publishes its financial report through mass media”. Paragraph 3 of the same article specifies what information should be included in the financial reports of political parties: “The report on the means received and spent during the reporting year shall contain data on sources and volumes of means entered into the account of the party, spending of such means as well as the property in possession, specifying its value”. According to Paragraph 6 of Article 28 of the law “On Political Parties”, “The source of a donation received by a political party, the value of which exceeds the hundred-folds of the minimum salary prescribed by the law, shall be specified in the financial report of the party.” This means that this data is also included in the financial reports of political parties and is subject to publication.

Obligatory publication of information about political

parties during elections and election campaigns is defined by the RA law “On Elections”. In this case, however, publication of information is performed not directly by the political parties themselves but indirectly by the Central Electoral Commission.

Thus, Paragraph 4 of Article 6 of the Electoral Code of the RA enables political parties to submit to the Central Electoral Commission their election programs in the electronic form defined by the CEC to be posted on the Central Electoral Commission’s website. Following the submission, the Central Electoral Commission shall post those programs on its website prior to the end of the following working day.

According to Paragraph 6 of Article 6 of the Electoral Code of the RA, for registration of electoral lists of political parties (party alliances), political parties (political parties included in party alliances) participating in the elections under the proportional system submit to the Central Electoral Commission a declaration about the party’s property and financial means. According to Paragraph 7 of the same Article, in a three-day period following the day of submission of the declarations of political parties, the declarations shall be posted on the website of the Central Electoral Commission.

The publicity of the activity of political parties in the election process is addressed by Article 27 of the RA Electoral Code; Paragraph 1 of this article defines that political parties, party alliances submit the declaration on payments to their pre-election funds and the use thereof to the Oversight and Audit Service of the Central Electoral Commission. The declaration specifies the chronology of the payments made to the pre-election fund, the amount paid, expenditures made for purchasing each service, property, and goods prescribed by Part 2 of Article 26 of the RA Electoral Code, the time they were made, data of the documents confirming that the expenditures were actually made, and the amount of money left in the fund. According to Paragraph 4 of Article 27, these declarations are published in a three-day period following submission thereof, by posting them on the website of the Central Electoral Commission.



## **International experience**

Political parties as such, even though they are not covered by the law of the RA “On Freedom of Information”, shall nonetheless operate publicly; their public practices and their responsibility to inform are addressed both by the RA Constitution, the RA law “On Political Parties” and the RA Electoral Code. Now let’s see what status do political parties, as information holders, have in other countries.

**In Bulgaria**, those political parties that receive allocations from the state are considered to be information holders.

**In the United Kingdom (Scotland)** political parties are not covered by the legislation on freedom of information, however the financial transparency of political parties is regulated by other legal acts not related to freedom of information as well as by the electoral commissions.

**The Information Commission in Macedonia** has decided to exclude the financial reports of political parties from the sphere of freedom of information and not to recognize political parties as information holders.

**In Serbia and Slovenia** political parties are not covered by the law regulating the freedom of information. In Latvia political parties as such are not included in the freedom of information sphere. Publicity and transparency of political parties are regulated by different specific norms.

**In the Russian Federation** political parties are not considered to be subject to the freedom of information.

**In Croatia** political parties are not covered by the law on freedom of information, however, pursuant to the legal act on funding of political parties, political parties in this country are obliged to publish their annual financial reports on their websites on their own initiative.

**In Indonesia** political parties are considered to be information holders. The related Indonesian law on freedom of information obliges political parties to publish, of their own initiative, a number of informations (principles and goals, the general program, the mechanism for making decisions, the decisions of the party, etc.).

**In Check Republic** political parties as such are not included in the related legal act on freedom of information and are considered as non-profit organizations, however they are obliged to publicize fairly voluminous information on their financial activity and expenditures.

It should be mentioned also that courts in a number of countries have decided that certain information about political parties should be accessible. Such decisions have been made by courts in Canada, Costa Rica, India, Israel, and Mexico.

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